

**These minutes are a summary of the discussion. The audible recording is available at the following website: <http://bit.ly/T3S7CB>**

Planning & Zoning Commission Meeting  
Minutes of December 5, 2012  
1st Floor North Conference Room - City Hall

**Present:** Chairman Nathaniel Cannady, Vice-Chairman Jeremy Goldstein (excused at 7:25 p.m.), Kristy Carter, Jane Gianvito Mathews, Joe Minicozzi, Holly P. Shriner and Paul Smith

**Absent:** None

**Pre-Meeting - 4:30 p.m.**

The Commission discussed the potential need for a Mid-Month meeting and determined that the meeting would be held on December 20, 2012. They then discussed several aspects of the Harris Teeter property conditional rezoning.

**Regular Meeting - 5:00 p.m.**

Chairman Cannady called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

**Administrative**

- ? Ms. Shriner moved to approve the minutes of the November 7, 2012, meeting, with a typographical error. This motion was seconded by Ms. Carter and carried unanimously by a 7-0 vote.
- ? Ms. Shriner moved to continue the review of the Level III site plan for the project identified as New Belgium Brewing Company to January 2, 2013. This motion was seconded by Vice-Chairman Goldstein and carried unanimously by a 7-0 vote.

**Agenda Items**

- (1) Review of Level II site plan for the project identified as Farnam Custom Products Expansion located at 30 Legend Drive. The project proposes construction of a 21,545 square foot addition to the existing facility. The property owner is Bradley Branch, LLC and the contact is Scott Bolyard. The property is identified in the Buncombe County Tax records as PIN 9644-90-8165, 9653-09-0998, 9653-09-2802, and 9644-90-8051.**

Urban Planner Julia Fields oriented the Commission to the site location and said he project site is approximately 4.69 acres in size and is currently addressed as 22 and 30 Legend Drive. Legend Drive is a private drive located off of Bradley Branch Road. The site currently consists of four separate parcels which will be combined to enable the proposed expansion to take place. The zoning on the property is Commercial Industrial (CI). There are two existing one-story buildings on the site (18,938 and 3,774 square feet) housing the operations of Farnam Custom Products, a custom electric heater manufacturer.

The applicant has submitted a site plan to expand their facility through the addition of an extra 21,545 square feet of building space. This extra space is being added to the larger of the two existing buildings. The total square footage of buildings on the site is proposed to be 44,257 square feet following construction of this addition. In order for the manufacturing operation to be maximized, the addition needs to be adjacent to and connect with the larger existing building. There are existing streams and sewer lines which limit development on the site. Improvements to the utilities on the site are proposed; a new 8" water main off of Machen Drive and a sewer line

relocation (MSD planned) are shown on the site plan. No additional lighting is proposed. The addition will be 14 feet in height.

Access to the site is from Legend Drive, a private drive that is accessible from Bradley Branch Road. The private drive will be marginally rerouted on the site as part of the improvements. The property is also potentially accessible from Machen Drive (a City-maintained street); presently there is a gate that prohibits access from Machen to the property.

Parking is currently not delineated on the site and consists of both asphalt and gravel parking areas. The proposal is for 116 parking spaces at completion of the new development. Parking is and will be minimally located in the front setback (23 spaces located in or partially in the setback). The applicant received approval for a variance from the Board of Adjustment of the City of Asheville on November 26, 2012, to allow for parking in the setback, which is not permitted in the Commercial Industrial District. The variance was granted in recognition of the odd shape of the project site and the numerous constraints to development. Forty-seven of the proposed new spaces on the site will be constructed with pervious pavers. These are in the parking area at the southernmost portion of the development.

The proposed landscaping meets or exceeds all City standards and incorporates the preservation of many of the trees on the site. Open space exceeds City requirements.

Pros:

- ? Expansion of an existing manufacturing operation supports many City goals concerning economic development.
- ? Proposed development plan is sensitive to existing streams and wooded areas; many existing trees are preserved.
- ? The proposed landscaping exceeds City standards.

Con:

- ? Portion of stream will have to be culverted to complete the proposed development.

Staff recommends approval subject to the conditions listed in the TRC report and the standards conditions listed as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards.

Chairman Cannady opened the public hearing at 5:13 p.m.

The landscape architect for the project said he was available for questions.

Chairman Cannady closed the public hearing at 5:15 p.m.

Based on the above findings and the analysis provided in the report, Vice-Chairman Goldstein moved to recommend approval of the project identified as Farnam Custom Products Expansion located at 30 Legend Drive, subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required

upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Ms. Mathews and carried unanimously by a 7-0 vote.

- (2) A request for a Conditional Zoning from Highway Business District, Community Business I District and RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Zoning for the project identified as Harris Teeter Phase 2 located at 17 and 23 Eloise Street and 136, 176 and 180 Merrimon Avenue. The rezoning would facilitate additional outparcel development in addition to the Harris Teeter store. A modification to the landscape buffer has been requested. The owner is Jasmine Development, LLC and the contact is Garland Hughes. The property is identified in the Buncombe County tax records as PIN 9649-33-7795, 9649-34-9101, 9649-34-9188, 9649-34-8159, and 9649-34-7179.**

Vice-Chairman Goldstein moved to recuse Ms. Shriner from participating in this matter due to a conflict of interest. This motion was seconded by Ms. Mathews and carried unanimously on a 6-0 vote (Ms. Shriner did not participate in the vote). At this time, Ms. Shriner left the room.

Urban Planner Julia Fields oriented the Commission to the site location and said the project site is approximately 8.45 acres in size, consists of five separate parcels, and is currently addressed as 17 and 23 Eloise Street and 136, 176, and 180 Merrimon Avenue. The vast majority of the property (7.3 acres) is zoned Highway Business (HB). The remainder of the property is zoned Community Business I (CBI), and Residential Single-Family High Density (RS8) Districts. Construction is underway on approximately 4.62 acres of the southern portion of the site for a Harris Teeter grocery store (45,000 square feet). There are two vacant houses and office buildings on the remainder of the property.

The applicant is petitioning for conditional zoning of the entire site to Highway Business Conditional Zoning (HB/CZ) to allow for the construction of up to five outparcels on the approximately 3.83 acres of the northern portion of the property in addition to the construction of the grocery store. On the site plan there are three outparcels depicted, however, this configuration is subject to change. The developer has proposed placing the following parameters on the development of the outparcels:

- ? No more than four outparcels.
- ? Buildings shall be no more than one story and 32 feet in height.
- ? Those buildings fronting on Merrimon will be oriented to the street and placed as close to the Merrimon as is reasonably possible based on the ultimate uses.
- ? The architectural design and building materials used for the outparcels will be similar to that being utilized in the Harris Teeter construction.
- ? A maximum of 25,000 square feet of building space will be constructed on the outparcels.
- ? No more than two drive throughs with only one drive through fast food restaurant

As each outparcel is brought in for detailed review a Level I review may be triggered, dependent on the extent of variation from this concept plan.

The developer met with the residents/property owners from the neighborhood to listen to their concerns and discuss the plans. The developer incorporated a number of the neighborhood interests into the plans submitted for review.

Access to the site is as was approved under the Level II review via Merrimon Avenue and East Chestnut Street. A traffic impact analysis was prepared in conjunction with the conditional

zoning application and was based on the above parameters and one drive through facility being located on the property. Sidewalks will be provided along all sides of the property.

Parking was approved for Harris Teeter (214 spaces) under the Level II review. Parking for the outparcels will be reviewed as details for each are finalized.

Buffering, street buffers, and street trees will be reviewed as part of the conditional zoning process subsequent to approval of the rezoning. Building impact and vehicular use are landscaping will need to be checked for compliance as details for each outparcel are finalized. Alternative compliance for the buffer along Holland Street (due to existing site conditions) on the Harris Teeter portion of the site received approval from the Tree Commission. The developer is requesting a minor modification of the required buffer width and plantings along Eloise Street, due to the retaining wall proposed and sidewalk placement. Open space is proposed to be urban open space. The development proposes to incorporate a number of urban open space features throughout the site with a focus along Merrimon Avenue. The buildings will be located closer to Merrimon than the typically required 35 foot front setback for Highway Business zoning. A public area and bus stop will be located near the corner of Merrimon Avenue and East Chestnut Street and the urban open spaces all along Merrimon Avenue will be connected via a 10 foot sidewalk. The sidewalk area will contain benches periodically spaced to offer public seating. An existing stone monument and wrought iron fence from the site will be incorporated into the bus stop/public area. Based on the final use of the parcels fronting on Merrimon Avenue, outdoor seating may be incorporated into the areas and connected to the sidewalk on Merrimon Avenue. Significant portions of the historic stone walls have been maintained and new walls erected are designed to complement these walls.

The Technical Review Committee of the City of Asheville reviewed this application at its meeting on November 19, 2012, with conditions.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

**1. That the proposed use or development of the land will not materially endanger the public health or safety.**

The proposed concept master plan has been reviewed by the City's Technical Review Committee which approved the plan with conditions. In conducting this review, the TRC evaluated health and safety issues.

**2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

There are no significant natural or topographic features on the site and much of the site has already been improved as part of the grocery store construction. The proposed development is similar to other uses/buildings along Merrimon Avenue. While staff believes that City policy indicates a preference for buildings of a more urban nature, the proposed one story limitation is permitted, and not unusual, in the Highway Business zoning district.

**3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The site was previously occupied primarily by a car dealership and later by other commercial ventures and largely consisted of impervious surfaces. The concept plan is anticipating commercial development of the entire site but should improve the value of adjoining properties through improved landscaping and aesthetics on the site.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

As previously indicated, the conceptualized commercial development of this site is similar to the scale, bulk, coverage, and character of much of the commercial development along Merrimon Avenue in the vicinity.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The area is shown as a potential urban village in the *Asheville City Development Plan 2025*. [An urban village proposal in 2007 was pulled from consideration by the applicant at the time]. The proposal supports the goal of locating larger commercial uses in appropriate areas easy to access from the interstate and adequately served by public services. The proposal supports the strategy of providing a transit stop as part of a redevelopment located along a transit route. Certain elements of the proposed development do not support the City's interest in limiting suburban development patterns in more urban settings, but the current Highway Business zoning of the majority of the property does not support this goal.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

The development is located along a principal transit route and on a major thoroughfare in the City. The project has received approval from the City's Technical Review Committee concerning issues of water, fire, police protection, etc.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The applicant has submitted a traffic impact analysis for the project that has been reviewed and approved by the City's Transportation Department. A traffic signal and other improvements to Merrimon Avenue and East Chestnut are incorporated in the plans.

Pros:

- ? Provides for greater use of a large property on a major thoroughfare within the city limits.
- ? Improved transportation amenities, large sidewalks, public open space areas, and greatly enhanced landscaping will improve the aesthetic impact of the site.

Con:

- ? The development, while providing some urban amenities, is largely suburban (auto access oriented) in nature in a gateway area close to downtown.

Staff recommends approval of this request subject to the conditions noted in the TRC report, the standard conditions, and with the landscape modification requested. Staff also recommends that (1) the buildings not be limited to one story to leave open the opportunity for development of buildings more urban in nature; and (2) only one drive through be permitted. The Transportation Department is also recommending a condition that if the traffic counts exceed, as indicated in the originally submitted Traffic Impact Study, as the uses are brought in one by one for final review, that a new Traffic Impact Study would need to be conducted including the impact from Trader Joe's traffic.

At a meeting on November 19, 2012, the Technical Review Committee of the City of Asheville reviewed this proposal and approved it with conditions.

Ms. Fields said she has received numerous e-mails regarding this project, most concerns were about traffic and the potential of a fast food restaurant on the site. Other concerns included no drive throughs, odors related to fast food, air pollution due to idling, cut-through traffic, noise from drive throughs, need for local businesses on the property, suggestion of off-street parking on Eloise if there was a potential for it to be widened, concern of traffic along Chestnut Street, need for traffic calming around Five Points neighborhood, better crosswalk from E. Chestnut to Maxwell & Monroe, more enforcement of no parking, and others.

In response to Ms. Mathews, Ms. Fields said that 25,000 square foot maximum is a total for all four parcels.

When Mr. Minicozzi asked if the landscaping proposed on the site was alternative compliance, Ms. Fields explained and showed modifications on the site plan.

When Vice-Chairman Goldstein asked for a breakdown of the percentage of CB-I and RS-8, Ms. Fields responded that she did not have that information with her at this time.

Mr. Minicozzi noted that there are specific standards for retaining walls in the UDO, and questioned if adopting this site plan, the Commission is adopting all the conditions of zoning for the site. In particular in the case of retaining wall standards, it's hard with the conceptual plans to know if they meet those standards. Ms. Fields noted that this is a conceptual plan and they would have to meet all those standards or go to Planning & Zoning Commission and/or City Council for modifications. On complex site plans, staff instructs the developers that if they want any modifications, they should be asked for at the conceptual stage.

Chairman Cannady opened the public hearing at 5:35 p.m.

Mr. Steve Vermillion, developer, clarified that they are conditioning that no drive throughs would be allowed on the rear portion of the property. The two requested drive throughs would be on the front portion. They think there is a good opportunity for a bank on the site and in today's market they almost have to have a drive through for the bank.

When Ms. Mathews asked about the height of the retaining wall along Eloise Street where alternative compliance is being requested, Mr. Vermillion said that the retaining wall on the back corner on Holland and Eloise would be approximately 18 feet. Mr. Rogan Martin, engineer on the project, said that when they do the actual design of the out parcels, they will be able to slope from the building down to the wall.

When Ms. Mathews asked why are we having to have alternative compliance on Eloise, Mr. Martin said that the parcel is zoned RS-8 and there is a 30-foot required buffer, but due to the retaining wall and sidewalk placement, they are asking for a 13-foot buffer, again noting that it is all conceptual.

Mr. Martin responded to Ms. Carter when she wondered if the houses on Holland Street would have to look at the tall rock retaining wall and the building right on top of the wall.

When Mr. Minicozzi questioned the approximate height of the retaining wall along Eloise Street opposite the last residential property (closest to Merrimon Avenue), Mr. Martin said that the height of the wall at this location was around 14 feet. The finish floor elevation of the building is approximately the top of wall elevation so the building height is above the wall elevation. He noted that lot of those details would be worked out when they come back for final Technical Review Committee approval.

Vice-Chairman Goldstein asked why the developer is asking for conditional zoning since 87% of the site is already zoned Highway Business. Mr. Vermillion said that the only reason is to bring in the two homes on Eloise Street owned by the developer to be part of the project.

In response to Ms. Mathews, Ms. Fields said that after a lot of discussion with staff and the developer, staff recommended Highway Business/Conditional Zoning for a more controlled coordinated design throughout the development and those types of issues.

Mr. Minicozzi noted that there is already a lot of grading on the site near Holland Street before this site plan review. Ms. Fields said they brought through an initial plan and because of the grading part of our ordinance. If they do grading without an approved site plan, they had to submit a landscape plan for the portion they were grading on. If this is not approved, they will still have to go back and plant the required buffer plantings. They have already submitted their landscape plan to City staff and that has already been approved.

The following individuals spoke about their concerns of a drive through, especially for a fast food restaurant, for several reasons, some being, but are not limited to, air quality from idling, safety for pedestrians, incompatibility with the neighborhood, not pedestrian oriented, cut-through traffic, need for traffic calming measures, already traffic congested area, odor from fast food restaurants, fast food restaurants are responsible for a lot of litter, concern of additional Trader Joe traffic in the area, height of retaining wall on Eloise Street, buildings should be no higher than one story, lights from development should not be invasive into neighborhood, narrow streets cannot handle additional traffic, and request for no through traffic on area streets:

Mr. Grace Curry, Asheville resident  
Ms. Carol Stangler, resident on Westover Drive  
Ms. Megan Kirby, resident on Eloise Street  
Mr. Robert Smith, resident on Monroe Place  
Ms. Heather Rayburn, resident on Woodrow & N. Holland  
Ms. Susan McBride, resident on Woodrow  
Ms. Mary Thompson, resident on Westover Drive  
Mr. Nick King, resident on Fulton Street  
Mr. Steve Rasmussen, west Asheville resident  
Ms. Kim McCormick, resident on Highland Street  
Mr. Greg McCoy, area resident  
Resident on Eloise Street

At 6:11 p.m., Chairman Cannady closed the public hearing.

When Ms. Mathews asked what triggers the additional Traffic Impact Analysis, City Traffic Engineer Jeff Moore explained that the original TIA covered two fast food restaurants (one with a drive through) and additional retail space. That generated a number of peak hour trips, both for a.m. and p.m. When the two restaurants become one larger restaurant (with a drive through), then the amount of traffic generated would be less. The actual numbers, based on the original TIA, for two restaurants only were 326 trips in the a.m. peak hour (one restaurant with a drive through was 221 trips). The p.m. peak hour was 211 trips for the two fast-food restaurants. With one fast-food restaurant the p.m. peak hour was 187 trips. Each shows a decrease. If another use came in that caused an increase above that original TIA, then he would want to see a new TIA with new recommendations for that traffic. The original TIA pre-dates the Trader Joe's development, but if a new TIA were to be required, he would want to see that traffic brought into it. It was not fair for the original TIA (which staff had accepted) to have to go back and add that in, as long as the impact proposed is less than the impact covered under the original TIA.

When Vice-Chairman Goldstein asked if there are any proposed changes to the intersection with either the Trader Joe's or Harris Teeter development, Mr. Moore said there is no room on Merrimon for a left turn lane into the development.

There as a brief discussion, initiated by Mr. Minicozzi, about the new traffic signal on Merrimon Avenue. Mr. Moore said that the new traffic signal is the biggest mitigation of traffic on Merrimon. The traffic signal was not located at the intersection of Broad Street and Merrimon Avenue because Merrimon Avenue is a N.C. Dept. of Transportation (NCDOT) street and NCDOT was concerned about the site distance over the hill. Ms. Fields noted that a traffic signal at Broad and Merrimon was staff's recommendation; but again, NCDOT said no.

Mr. Minicozzi voiced concern that traffic analyses are not done looking at the existing zoning to see what would happen if area properties were built to capacity in the near future, shaping what the area would look like. Planning & Development Director Judy Daniel said that the Transportation Department has to evaluate the developments on a case b y case basis given existing conditions. In every community there is an on-going concern over ultimate traffic load. We don't have a method for gauging ultimate traffic load. With the standards that traffic engineers are given to use, with limited control given that the NCDOT controls road in the City, this is their estimation of how traffic could function under the current situation.

In response to Ms. Carter, Mr. Moore, said that as long as the traffic generation from each additional property use falls below the numbers in the original TIA, then a new TIA would not be necessary. To make sure they fall within those numbers, prior to the approval of each additional proposed land use, a technical memo would be submitted, signed and sealed by a Professional Engineer, that would include the trip generation numbers for that land use and whether or not it would exceed the traffic volumes contained in the original TIA. That memo would become an addendum to the original TIA.

When Ms. Carter said that since Mr. Voso said that there may have been recommendations for the intersection of Chestnut and Merrimon but they may not have been feasible, she asked what those recommendations were. Mr. Voso said that there was the possibility of a left turn lane from Merrimon Avenue to Chestnut Street but there was no right-of-way available to do that.

Ms. Mathews understood the TIA tabulations from Mr. Moore, but she was talking about reality, since we already have some functionality issues at the intersection of Chestnut and Merrimon. After the development is built and we see that intersection is more problematic, will another TIA be required and whose responsibility will it be to perform it with mitigation recommendations. Ms. Daniel said that if anything else is built later and the citizens in the area feel the traffic mitigation is not working, they can appeal to City Council who may direct the Transportation Department work on possible improvements. Mr. Moore noted that one way additional traffic could be handled would be changing the signal timing.

When Ms. Mathews voiced support for keeping on-street parking on Chestnut due to the need, Mr. Moore said that on-street parking is a very effective traffic calming measure.

Ms. Carter questioned the functional rating of Merrimon Avenue and asked if there is anything in the works to improve Merrimon Avenue in general.

Mr. James Voso, traffic engineer for the developer, said the defined study area is agreed upon by the developer, City traffic engineer and the developer's traffic engineer. Standard practices and methodology is followed for the TIA. A traffic signal and widening of Merrimon Avenue was recommended as mitigation. Merrimon Avenue is a NCDOT road and they had the ultimate say-so on whether or not the traffic signal would ultimately be located. They did not want the new traffic signal at Broad Street and Merrimon Avenue because they were concerned about its close proximity to the traffic signal at Chestnut Street. Other mitigation improvements are recommended, but some are not feasible, e.g., there is not a left turn lane on Merrimon Avenue to Chestnut Street. Unfortunately the developer does not own that property so a left turn lane cannot be built. There will be a TIA for the Trader Joe's project and they will be responsible for



certain mitigation improvements as well. Once the developer's TIA is approved by the City, whatever mitigation improvements are recommended, the developer is responsible for them. If the project is built, but the mitigation improvements are not adequate, the developer has fulfilled his obligation.

In response to Mr. Minicozzi, Mr. Voso explained why the left turn movements from Broad Street onto Merrimon Avenue were not studied. In addition, the left turn movement is so low due to the difficulty and dangerous movement from cars cresting over the top of the hill. Again, they and City staff recommended the traffic signal at that location; however, the NCDOT disagreed and moved it to another location.

In response to Chairman Cannady, Mr. Moore noted that he did not know if there was a mechanism to go back to the NCDOT to express additional concerns on the traffic signal location. In his opinion, coming over that hill mitigates the signals being too close together under NCDOT guidelines. NCDOT could go back and look at that, but he wondered if it was too late in the project for the developer to ask again. Ms. Carter felt that this could be a condition of the conditional zoning.

When Chairman Cannady asked when the Harris Teeter TIA was done, Mr. Voso said it was done in September of 2010, but it included the Harris Teeter and infill development. As long as whatever the developer is proposing is less than those numbers, they are okay, but if it's more, then they will have to prepare a new TIA including the Trader Joe's traffic.

When Chairman Cannady asked if there are any traffic calming measures planned for the side roads, Mr. Moore replied that was not addressed. The additional traffic projected by this development on those side roads is not that significant.

Vice-Chairman Goldstein stressed that 86.4% of the site has a right to be developed as is, without any of the Planning & Zoning Commission's input. He wondered if we could potentially do more harm to some of these objections in terms of drive through traffic, building height, etc. by not doing anything vs. by conditionally zoning this and agreeing to a certain set of limitations. He wondered if they could put three drive throughs on the property without changing the zoning. Assistant Planning & Development Director Shannon Tuch said that it's unlikely to fit three drive throughs on the site, but maybe two because there are cueing requirements, dedicated square footage dedicated to the building itself, parking, etc.

Mr. Smith agreed with Vice-Chairman Goldstein noting that the residents all have legitimate arguments and suggested that residents with the air quality concerns have those addressed prior to the development of a project. Ms. Fields said that if the conditional zoning was denied, would the developer have to come in with several Level I projects where there could be a variety of uses permitted in the Highway Business District. Drive throughs are not permitted in Community Business I.

Vice-Chairman Goldstein viewed this as an opportunity to provide a consistent well-designed development with some conditions, since the vast majority of the site is Highway Business District.

When Ms. Carter asked if the City's Bicycle Plan includes Chestnut Street, Mr. Moore believed it did.

When Vice-Chairman Goldstein asked for staff's reasoning that the buildings not be limited to one story, Ms. Fields said they wanted to leave the door open for development of buildings more urban in nature.

When Ms. Mathews suggested a two-story with a height maximum, Ms. Fields felt that would be appropriate and recommended a maximum of 32 feet in height.

Chairman Cannady said that this site will not be another Deal Buick regarding lighting especially with all the new outdoor lighting standards. Ms. Fields said the development will have to meet all the City's outdoor lighting standards.

Mr. Minicozzi said that since staff has the discretion on a site to require full cut-off, he wondered if we can make that as a condition.

When Mr. Minicozzi asked if there is a lighting standard that is beyond full cut-off, because in this development there is a surface parking lot that in some cases is 30 feet above some homes and when people look up, they would be looking under the lights. Ms. Tuch said that there is a standard in both the current ordinance and the proposed ordinance that would allow the Planning Director to require either a different fixture or additional shielding, or something of that nature, to address those kinds of concerns based on difference of elevation and other nuisance related issues.

When Mr. Minicozzi asked if there could be a time limit set on the lights, Ms. Tuch said that could be a condition of the proposal agreed upon by the developer. Ms. Fields recalled that at the developer's meeting with the neighbors, they expressed a willingness to work with them in terms of shielding as the lighting was put in place.

Based on the above findings and the analysis provided in the report, Vice-Chairman Goldstein moved to recommend approval of the project identified as Harris Teeter Phase 2 located at 17 and 23 Eloise Street and 136, 176 and 180 Merrimon Avenue, from Highway Business District, Community Business I District and RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Zoning, and approval of the modification to the landscape buffer, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (6) There be no more than four outparcels; (7) Buildings shall be no more than two stories with a maximum of 32 feet in height; (8) Those buildings fronting on Merrimon will be oriented to the street and placed as close to the Merrimon as is reasonably possible based on the ultimate uses; (9) The architectural design and building materials used for the outparcels will be similar to that being utilized in the Harris Teeter construction; (10) No more than one drive through; (11) A maximum of 25,000 square feet of building space will be constructed on the outparcels; and (12) If the traffic counts exceed, as indicated in the originally submitted Traffic Impact Study, as the uses are brought in one by one for final review, that a new Traffic Impact Study would need to be conducted including the impact from Trader Joe's traffic.

Chairman Cannady asked for a friendly amendment that the developer be allowed no more than two drive throughs, with only one drive through fast food restaurant. Vice-Chairman Goldstein accepted the amendment. Chairman Cannady then seconded the amended motion.

Mr. Voso agreed to all the conditions outlined in the amended motion.

Ms. Carter said that traffic was one of her concerns and making an individual decision when we know there are bigger/broader impacts. However, traffic won't be the item that prevents her from voting for his. Another concern is when neighborhoods want traffic calming measures and the answer they get is there is a long cue of neighborhoods waiting and no money to fund

traffic calming. That is a problem that is not okay. Regarding the fast food issue, she personally would not want a fast food restaurant; however, the developer can still put in a fast food restaurant whether the Commission agrees to it or not. To have the ability to condition the area is a control worth compromising on. She could support one drive through. She suggested the Commission carve out some time on how to address this corridor in a comprehensive way.

Mr. Minicozzi said outlined some goals in the 2025 Plan that are directly contradictory to what we are doing (eliminate the opportunity for suburban development in urban locations; and interconnectivity and increasing connections in our community). He offered the following friendly amendments (1) widen the sidewalk on Eloise Street more than 4-feet; and (2) there be a sidewalk connectively from Merrimon Avenue to the building on the site in the lower left corner (which already shows a sidewalk in the front of that building). The second amendment is to give staff the ability to negotiate with the developer to increase all opportunities for pedestrians to walk through the site. He could support one drive through. Vice-Chairman Goldstein and Chairman Cannady accepted the sidewalk connectivity condition.

Ms. Mathews felt that the two outparcels should face Merrimon Avenue and not to the parking lot. She asked for a friendly amendment that the two outparcel buildings face and relate to Merrimon Avenue so it would become somewhat pedestrian oriented and not a vehicular driven development.

Mr. Minicozzi suggested that the parcel that is semi-designed in a drive-through pattern be flipped and that every effort be made to make the NCDOT put a traffic signal at the intersection of Broad Street and Merrimon Avenue. Mr. Vermillion responded that they supported the traffic signal at Broad and Merrimon, but NCDOT said no, so they have already installed all the infrastructure, right-of-ways are being purchased and curb-cuts finalized at the location NCDOT approved.

Mr. Minicozzi asked for a friendly amendment to increase the ability for staff to work through the lighting issues, with perhaps a time limit on the lighting if the developer is amenable to that. Chairman Cannady was concerned from a safety standpoint especially if people are walking home from a restaurant. Vice-Chairman Goldstein felt it would be difficult to dictate the hours not knowing what the uses would be. Ms. Tuch said that the ordinance does currently empower staff to work with property owners on mitigating safety concerns or nuisance concerns. Vice-Chairman Goldstein felt that since staff already has the authority to work with the developer, he could not support this friendly amendment.

Personally Ms. Mathews did not support any fast food drive through restaurants on the site since it a very suburban development in an area that should be more urban and she cannot vote for two drive throughs. We have an opportunity to be proactive and limit it to one drive through as a compromise.

When Ms. Carter voiced concern of the list of allowed uses allowed in the Highway Business District and whether the motion could be conditioned not to include some of them, Mr. Vermillion said that they could go through the permitted uses and strike through the ones they know won't be a part of the development, noting that they have already been restricted on some of them due to the Harris Teeter lease. Ms. Fields suggested the list be approved by City Council. Vice-Chairman Goldstein and Chairman Cannady accepted this into the motion.

When Vice-Chairman Goldstein asked Mr. Vermillion about his thoughts on one drive through, Mr. Vermillion said that the two uses they think is very important as part of the project is one drive through for a bank and one drive through for a coffee store. In today's market, both of those uses require a drive through. He again asked for two drive throughs with a restriction that one not be a fast food restaurant.

The following amended motion failed on a 3-3 vote, with Chairman Cannady, Vice-Chairman Goldstein and Mr. Smith voting "yes" and Ms. Carter, Ms. Mathews and Mr. Minicozzi voting "no". (Ms. Shriner was recused): Moved to recommend approval of the project identified as Harris Teeter Phase 2 located at 17 and 23 Eloise Street and 136, 176 and 180 Merrimon Avenue, from Highway Business District, Community Business I District and RS-8 Residential Single-Family High Density District to Highway Business District/Conditional Zoning, and approval of the modification to the landscape buffer, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (6) There be no more than four outparcels; (7) Buildings shall be no more than two stories with a maximum of 32 feet in height; (8) Those buildings fronting on Merrimon will be oriented to the street and placed as close to the Merrimon as is reasonably possible based on the ultimate uses; (9) The architectural design and building materials used for the outparcels will be similar to that being utilized in the Harris Teeter construction; (10) The developer be allowed no more than two drive throughs, with only one drive through fast food restaurant; (11) A maximum of 25,000 square feet of building space will be constructed on the outparcels; (12) if the traffic counts exceed, as indicated in the originally submitted Traffic Impact Study, as the uses are brought in one by one for final review, that a new Traffic Impact Study would need to be conducted including the impact from Trader Joe's traffic; (13) There be a sidewalk connectively from Merrimon Avenue to the building on the site in the lower left corner (which already shows a sidewalk in the front of that building); and (14) The list of permitted uses in the Highway Business District that will not be a part of the development be approved by City Council.

At 7:18 p.m., Chairman Cannady announced a short recess and Ms. Shriner re-entered the room to participate in the remainder of the Council meeting. Vice-Chairman Goldstein was excused from the remainder of the meeting.

**(3) Ordinance amending Article 11, Chapter 7 of the Code of Ordinances regarding updating standards for outdoor lighting**

Assistant Director of Planning & Development Shannon Tuch said that this is the consideration of an ordinance amending Article 11, Chapter 7 of the Code of Ordinance regarding updating standards for outdoor lighting.

Beginning in June 2012 and over the following several months, planning staff shared with the Commission the evolution of the City's new outdoor lighting standards update; and on September 5, 2012, the Commission approved the draft of revised standards. Despite the work that went into the draft up to that point, the standards continued to be examined and additional opportunity for improvement was identified. It was questionable whether these additional changes necessitated re-review by the Commission; however, out of an abundance of caution the draft was revised. BUG ratings and all other standards previously discussed remain the same. The main changes included in this final draft can be summarized as follows:

- ? **Additional re-organization.** It was noted that there were a few redundancies and clarifications that resulted in moving specific standards to new sections along with some minor wordsmithing.
- ? **Additional definitions.** Upon closer review, it was felt that those not familiar with lighting standards may benefit from some additional definitions – these include: *Fully shielded, Lamp, Low voltage lighting, and Seasonal lighting.*

- ? **New definition and exemption for *Low voltage lighting*.** The draft had already included some exemptions that would allow *very low luminosity* uplighting; however, recognizing the abundance of low tech and DIY projects that utilized low voltage lighting, an additional exception was provided, specifically for landscape lighting. This is also consistent with the new NC Energy Code and IDA (International Dark-sky Association).
- ? **Updated lumen limits that better matched existing products and designs.** An inventory of new products helped establish appropriate lumen limits for certain lighting applications.
- ? **Clarification of a current prohibition.** It had been planning staff's interpretation that illuminated walls were designed to be attention getting devices and, therefore, signs. As such, they have always been prohibited but this has now been clarified in the draft.
- ? **Revised and removed language to maintain consistency with NC State Building Code and the new NC State Energy Code.** The State of NC adopted updated energy code standards in July of this year. These standards promote basic energy efficient practices, which affects lighting standards. As a result, in some instances standards that had previously not been required by state code could be removed from local regulation and from the City's standards. A statement regarding how to handle conflicting language was also added.
- ? **Additional clarifications & standards for skylights and other daylighting features.** In an effort to follow the intent of limiting light escape from daylighted features, a requirement for glazing (typically used already) and a prohibition to uplight the skylight well were added. It was also clarified that these standards are intended for commercial applications so one and two-family dwellings have been exempted.
- ? **Removal of the exception for post-mounted decorative cutoff fixtures** The current standards and earlier draft maintained an exception to the full cutoff requirement for site lighting when a post mounted decorative fixture was used. Per the recommendation of SACEE, this exception has been removed. This recommendation had been discussed briefly at the September 5 Planning & Zoning Commission meeting, however, no formal motion was made or voted upon.

At 7:32 p.m., Chairman Cannady opened the public hearing.

Mr. Bernard Arghiere stated that there are many full cutoff lights being manufactured now and supported the draft ordinance.

When Mr. Minicozzi asked if Progress Energy is supportive of the full cutoff lights, Ms. Tuch said that she did share a copy of the draft with their Progress Energy representative who had some concerns, but none of them about the full cutoff lights.

Chairman Cannady closed the public hearing at 7:34 p.m.

Because of the complex nature of this ordinance amendment, Commission members thanked Ms. Tuch for her work on the amendment.

Based on the above findings and the analysis provided in the report, Mr. Minicozzi moved to recommend approval of an amendment to Chapter 7 of the Code of Ordinances regarding updating standards for outdoor lighting. This motion was seconded by Ms. Mathews and carried unanimously on a 6-0 vote.

**(4) Ordinance amending Article 16, Chapter 7 of the Code of Ordinances to remove a ban in place for outdoor speakers applied to eating and drinking establishments located in the Central Business District and River District zoned areas**

Urban Planner Alan Glines said that this is the consideration of an ordinance amending Article 11, Chapter 7 of the Code of Ordinance to remove a ban in place for outdoor speakers

applied to eating and drinking establishments located in the Central Business District and River District zoned areas.

For some time, there has been a prohibition on outdoor speakers for 'eating and drinking establishments' in seven zoning districts including the Central Business District and River District. A similar ban in the CBD (and five other zoning districts) is in place for the "Microbrewery" use that was created several years ago. These UDO bans appear to be in place out of concern for potential noise conflicts between outdoor seating areas of businesses (focused CBD and River) or to avoid noise conflicts with nearby residential areas (the situation for the other zoning districts). Over time, however, the number of restaurants downtown and in the River district has grown tremendously to create exciting dining and entertainment districts and outdoor music has come to be expected in the outdoor seating areas.

Also, the ban on outdoor speakers has been difficult to enforce since most business operators do not consider this type of feature a 'use' and therefore do not expect to have it addressed by a zoning permit. As the number of restaurants and "drinking establishments" has expanded, the use of speakers has reportedly grown; but there have been very few complaints about noise levels in either district. As a rule, the downtown and river district business owners work together because of their close proximity to one another. Therefore, the staff is recommending that this ban be removed for these two zoning districts.

No change to the restriction for "eating and drinking establishments" is recommended for the other affected districts (Office, Office Business, Office II, Institutional, and Neighborhood Business), or for the other districts where the "microbrewery use" is permitted (Office, Office II, Office-Business, Institutional, and Resort) as they have greater potential for conflict and noise concerns affecting adjoining residential areas. The "eating and drinking establishments" section of the UDO also bans drive-through facilities and no change to that restriction is proposed.

If the outdoor speaker ban is removed noise complaints would be enforced through the noise ordinance. That ordinance was recently reviewed and strengthened by City Council, and the Asheville Police Department will continue to enforce noise complaints using the 'reasonable person' standard.

Downtown Commission and River Arts District Business Association Review:  
The Downtown Commission at their meeting on October 12, 2012, voted 6-0 to recommend removal of the ban in the CBD. After reviewing the UDO that staff also felt that the ban for speakers in the River District would be likely to meet support since these districts are similar in their support for eating and drinking establishments. The River Arts District Business Association unanimously supported removing the ban in the River District.

This action supports the City Council Strategic Operating Plan for job growth and economic development which seeks to remove barriers to a robust and vital economy through the removal of unnecessary regulations.

Pros:

- ? Supports the continued vitality of downtown Asheville and the River district.
- ? Removes an unnecessary restriction from the CBD and River Districts.

Con:

- ? None noted

City staff recommends City Council adopt an ordinance to remove a ban on outdoor speakers in the Central Business and River districts by amending the UDO.

When Ms. Mathews asked about what happens now with competing speakers from several outdoor cafes, Mr. Glines said that the neighbors have been working it out amongst themselves.

Because the downtown is a mixed use, Ms. Mathews asked if the location, volume or duration time of outdoor speakers is addressed anywhere in the ordinance or if it is addressed by the noise ordinance. Mr. Glines said it is more clearly addressed for residential districts. There is no regulation about the location of a speaker. City Council debated at length about going to a decibel system; however, when they adopted the noise ordinance, they adopted the reasonable person standard. The noise ordinance will be reviewed by City Council in one year.

Mr. Smith felt there were too many variables in this ordinance. When he asked what the difference was between enforcing the ordinance downtown vs. a residential neighborhood, Mr. Glines explained that the Central Business District is a unified area with the expectation of a greater commercial variety in the downtown. Planning & Development Director Judy Daniel said the other districts back into residential zones where there is a different expectation in a residential zone than if you are a resident in a mixed-mainly commercial zone.

Ms. Mathews had a discomfort about the ability of noise to encroach onto different environments. She was concerned about the quality of life for the mixed-use district residents.

When Ms. Carter asked how this amendment came about, Mr. Glines said that the Downtown Commission asked for the amendment due to the incremental growth in speakers and the restaurants that have expanded. They felt like it was something that was out of step with how downtown was growing. Ms. Tuch explained further that a restaurant was given a notice of violation for having outdoor speakers. That person attended a Downtown Commission meeting who instructed staff to investigate the complaint. After investigation, the Downtown Commission felt that this was already occurring commonly so they asked for the amendment.

When Mr. Minicozzi asked if the Downtown Asheville Residents Neighborhood reviewed this amendment, Mr. Glines said he did not run this amendment through them, but they were aware of the amendment because they get a copy of the Downtown Commission agenda.

Ms. Carter suggested tabling this amendment and invite a member from the Downtown Commission to respond to some of their concerns. Ms. Tuch saw no problem in postponing action since it is not being actively enforced. She said they are only following upon the direction of one of their commissions.

At 7:53 p.m., Chairman Cannady opened the public hearing.

Mr. Steve Rasmussen, west Asheville resident, voiced concern that there is also a Central Business District in west Asheville which backs up to middle income residential areas. He believed no public input was taken from west Asheville residents on this amendment. He also noted that due to the topography, the sound will channel through the neighborhoods.

In response to Mr. Rasmussen, he said the difference in Haywood Road is that most of the length of the corridor is Community Business II District but there are two pockets of Central Business District. So the speaker ban is only in place currently in two small areas and for the CB II sections, there is no ban. He felt the residents have the noise ordinance for enforcement of noise complaints.

When Mr. Minicozzi asked about violations, Associate City Attorney Jannice Ashley explained the Noise Ordinance Appeals Board procedure, managed through the Police Department. She said that after the second complaint the violation amount would increase.

In response to Mr. Minicozzi, Mr. Glines said that he worked with the Haywood Road Corridor Group but understands that the West Asheville Business Associations meets sporadically. He said the amendment can be sent to some of the members from the Corridor Group.

Ms. Carter said that since City Council will be reviewing the noise ordinance in one year, she would support this ordinance also being reviewed in one year.

At Ms. Mathews suggestion of adding the ban to the other districts that abut residential districts, Ms. Daniels felt that was a good idea and that staff will look at that separately and add that on their list of things to consider.

Ms. Grace Curry did not support any additional noise added to our environment. If allowed, however, she wondered if it would be limited to just music.

Chairman Cannady closed the public hearing at 8:06 p.m.

When Mr. Minicozzi suggested putting a sunset on the ordinance, Ms. Tuch said that we cannot sunset the ordinance, but the Commission can request that staff come back in a year for review and at that time the Commission can amend the ordinance to ban them with a possible amortization for the people who have invested in the equipment.

In response to Mr. Smith, Ms. Daniel said that the Planning & Zoning Commission is being asked to make a recommendation on a change to the zoning ordinance requested by the Downtown Commission.

Based on the above findings and the analysis provided in the report, Chairman Cannady moved to recommend approval of an amendment to Chapter 7 of the Code of Ordinances regarding the removal of ban in place for outdoor speakers applied to eating and drinking establishments located in the Central Business District and River District zoned areas. This motion was seconded by Ms. Shriner and carried on a 4-2 vote, with Ms. Carter and Ms. Mathews voting "no".

**(5) Ordinance amending Article 16, Chapter 7 of the Code of Ordinances to provide minor amendments to general regulations related to mobile food vending with new restrictions for operating in Biltmore Village and an amendment to Article 5, Chapter 16 of the Asheville Code of Ordinances to extend the hours of operation for pushcarts.**

Urban Planner Alan Glines said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville to provide minor adjustments to the mobile food vending ordinance and add limitations to vending in the Biltmore Village Historic District. A secondary consideration is an amendment to Chapter 16 of the City Code to extend the hours of operation for sidewalk pushcarts

The mobile food vending ordinance, primarily but not exclusively related to the use of food trucks downtown, was adopted late in the summer of 2011 and has been in place for over one year. When it was adopted City Council directed staff to come back after about a year to provide comments about how the ordinance has worked.

One main site for mobile food vending has been approved and is operating in the downtown area at 51 Coxe Avenue. The parcel was leased and took several months for site improvements to be completed (street trees and power service to operate the trucks). The ordinance allows a limit of 10 trucks to operate in the downtown Central Business District. In early November the tenth and final food truck received final inspection and approval for the site, so there are no more permits available in the downtown CBD unless a current operator lets their



permit expire. The food truck lot appears to be successful but the food vendors have indicated that they would like to expand this operation into the evening and weekend hours. The operators are also interested in finding other sites in downtown to create an additional lot to expand the available work shifts. Locations are difficult to secure because it usually means displacing some other income-generating use on the lot such as surface parking.

The amendment proposed below was initiated by staff after review of the ordinance in preparation for the one-year anniversary of its passage. The current ordinance and proposed amendments have been reviewed and discussed with representatives of the downtown mobile food vendors, the Downtown Commission (DTC), the Asheville Parks and Recreation Department staff, the Historic Resources Commission (see below for additional input from the HRC) and with the Planning and Economic Development Committee.

The Parks and Recreation Department did not feel that any changes were needed for operating at park sites, noting that aside from special events there is not enough consistent demand to operate a food truck at a park location. The trucks are already allowed for special events.

The proposed changes reflect proposals to address issues that have arisen during this first year of operation related to defining the use better, operational standards, and signage.

### **Summary of Changes**

**Definition-** The amendment would change the definition of mobile food vendor to include trucks that just serve drinks for example and don't contain a *kitchen*. (For example, we have seen several coffee trucks start operating.)

**Operation standards-** Changes to keep the ordinance in line with recent new posting requirements from the Health Department; and a change related to their allowed operating hours to allow mobile food vendors flexibility to maintain their schedules using social media or other mutually agreeable methods of notification.

**Signage-** The Mobile Food Vendors have requested an additional allowance for signage on their trucks. Staff is inclined to support the request because the signage is primarily visible from inside the lot. Flexibility in truck signage allows the truck to be recognizable in spite of the variety of locations that trucks vend from (trucks usually work from a variety of different venues).

### **Biltmore Village Historic District:**

The Historic Resources Commission (HRC) has conveyed their interest in adding limitations for operating food trucks only in the Biltmore Village Historic District. Biltmore Village is commercially zoned and under the current wording in the ordinance there are no limitations for mobile food vending there. Currently a single truck is operating using a temporary use permit (allowing 180 days of operation per calendar year).

A merchant who is also the president of the Biltmore Village Merchants Association became concerned about mobile food vending and brought the issue to the Historic Resources Commission for consideration. Some members of the Commission felt that this activity is out of character with the district's goals and some others did not feel that it would have a negative effect. It was apparent to Commission members that it would be difficult to apply design guidelines to the trucks since they are not structures for which the guidelines were written and the primary focus of the commission's work.

After careful review, the HRC voted 6-4 (5 for, 4 against and one abstention) to maintain allowing mobile food vending but with limitations similar to those established for the downtown Central Business District where only ten trucks are allowed and no temporary use permits for mobile food vending are. In Biltmore Village the staff recommends a limit of two trucks based on the small

scale of the district. As required in downtown trucks would have to establish a permanent location and provide limited site improvements (primarily street trees and sidewalk access). Trucks would also be required to provide electric power to the site instead of using generators in order to maintain the ambiance of the district. These limitations on the operation of food trucks would be waived in the case of special events which apply for approval under other permits (this same rule is true for downtown too).

While this recommendation reflecting the intent of the HRC, concern remains among other business owners in Biltmore Village who are also members of the Biltmore Village Merchants Association that any trucks will be out of character with the goals of the historic district.

#### **Hours of Operation for Push Carts:**

In January 2012 a number of changes were approved by City Council concerning the operation and permitting of activities in sidewalk right-of-way areas. These activities included operation of pushcarts, outdoor dining, and outdoor merchandise sales. The changes were generally clarifications and related to encroachment consistency. During the course of the year, some pushcart operators came to a meeting of the Downtown Commission with two concerns: (1) they would like pushcarts included in all outdoor community events and festivals, with the exception of Bele Chere and not be required to vacate their sites; and (2) they would like the pushcart hours of operations be extended from 11:00 p.m. to 2:00 a.m. The DTC is looking into special events permitting at this time and asked that the pushcart operators to be involved in that process. The DTC recommend support for this request for the extension of the hours of operation with a vote of 8-0.

These proposed modifications comply with the City Council Strategic Operating Plan goals of job creation and community development by supporting diversified job growth but with reasonable regulations to assure a balanced approach to managing the communities where business activities take place.

#### **Pros:**

- ? Allows the ordinance to remain up to date to current standards and practices
- ? Moves to balance business enterprise with maintaining the special character of a key area of the city
- ? Allows the City code to remain relevant to adjustments in community interests

#### **Con:**

- ? The nature of some ordinances is such that they require review and adjusting over time

No fiscal impact is expected with this ordinance change.

City staff recommends City Council adopt an ordinance incorporating the changes to the City Code of Ordinances as outlined in the staff report.

When Mr. Smith what the determination would be for the two trucks in Biltmore Village, Mr. Glines said that it would be the first two that applied. Two were suggested based on the small scale of the district.

Chairman Cannady opened the public hearing at 8:19 p.m.

Mr. Stan Collins, representing 60-70% of the property owners in Biltmore Village, was concerned that allowing mobile food vending units to occupy space in Biltmore Village will create a change to the overall image and overall visual character of the Village. That change would be counter to the established district guidelines. Visitors and locals come year after year to the village because it has appeal and retaining that image is critical to the life of the Village. The guidelines established in 1988 were to improve the market image and enhance the overall character of Biltmore Village. They wish to protect the property and values that people are

looking to expect in the Village. From a historical prospective, food trucks can be incongruent with the strict historical guidelines that direct the businesses in the Village. The presence of food trucks in the Biltmore Village Historic District will undermine decades of careful monitoring of historic regulations, they could lower the high standard and they could potentially damage established Village businesses. We want to be guardians of Biltmore Village. Our goal is to keep the Village one of Asheville's jewels. We ask that mobile food vending trucks not be allowed in Biltmore Village.

Mr. Smith wondered why some people felt it was okay to have food trucks in downtown Asheville which is also a historic setting but not have them in Biltmore Village. Mr. Collins felt the distinction between downtown and Biltmore Village is the size of the area. Ms. Mathews also noted that the local historic district comes with guidelines and plans that are established for that area, which downtown doesn't have as a national historic district. Biltmore Village and three other historic districts have mandated guidelines and parameters that preserve it. The general development plan for Biltmore Village emphasizes preserving its residential character and pedestrian environment. When you buy into an historic district, you are buying into that governance.

Ms. Susan West, business owner and property owner of Biltmore Village, said that as far as history goes, downtown has several different decades represented, whereas, Biltmore Village is representing one congruent design period. That is what we are trying to protect. Biltmore Village has three books of guidelines they must follow. For example, painting something or planting something has to be reviewed by the HRC. They want to see that careful attention taken to any business in Biltmore District. They are not against food trucks. They just want to see guidelines and regulations for food trucks to protect what they have been protecting for decades.

When Mr. Smith asked why food trucks are not included in the regulations, Ms. West said that the State would need to have something presented to them to consider an amendment. Associate City Attorney Jannice Ashley said the standard for historic districts comes from the State Statutes, but it is the same across the entire federal government, which is historic resource commissions don't have purview over use. They have purview over appearance and structures. A food truck will not fall into that category. That is why it is coming under the zoning ordinance. Zoning can control the use. You cannot write a guideline into historic guidelines.

In response to Mr. Minicozzi, Planning & Development Director Judy Daniel said that because a food truck started operating in Biltmore Village, staff took it to HRC to get their thoughts. Mr. Collins and Ms. West are representing the Biltmore Village Merchants Association and 27 property owners. The Biltmore Village Merchants Association has a different opinion than the HRC.

When Mr. Minicozzi asked if there were different standards and period food trucks, would that be compatible to Biltmore Village, Ms. West replied yes. Recent discussion is that they form a steering committee to develop guidelines and present to the State for an amendment.

Mr. Tom Youngblood, Biltmore Village property owner who allows the mobile food vendor to operate in his parking lot, said that Biltmore Village is a commercial area. The mobile food vendor operates a coffee truck in his parking lot. He said that the truck is providing a service to the Village and supported the amendment.

HRC Director Stacy Merten said that she recommended against allowing mobile food trucks in Biltmore Village based on the general development plan. However, the HRC voted 6-4 to maintain allowing mobile food vending but with limitations similar to those established for the downtown Central Business District. It's unfortunate that we can't have guidelines for that service and issue a Certificate of Appropriateness. The HRC didn't make any recommendations on aesthetic.

When Mr. Minicozzi asked if additional local voluntary compliance guidelines could be drafted, Ms. Ashley said that State Statutes dictate what a HRC has purview over and use is not that. The HRC can only issue a Certificate of Appropriateness for a permanent structure.

In response to Mr. Minicozzi, Ms. Ashley said that the statutes are very clear on what an HRC can and can't do. That is why we are utilizing the power of the zoning ordinance via the Planning & Zoning Commission and City Council to determine appropriate use. Ms. Merten said that HRC is mandatory quasi-judicial body unlike the Downtown Commission which is an advisory body.

Ms. Mathews asked if there were a set of guidelines that were more aesthetic or character defining that were more appropriate to Biltmore Village, could we develop those and bring them into the zoning ordinance. Ms. Ashley believed you could but it was not a clear mandate from HRC. They said to let them do what they do in downtown. She noted there are very limited places any food truck could go within Biltmore Village because it would be in a private parking lot and not many have excess parking.

Ms. Merten also responded to Mr. Smith's earlier question regarding the difference between downtown and Biltmore Village. She said that Biltmore Village is a local historic district and there are expectations on all the property owners and also it is more of a unified district.

Ms. Shriner stated that she was not a big proponent of food trucks at the beginning, but she has seen what a great addition they are to the downtown. She also spends a lot of time in Biltmore Village and felt that two trucks might be appropriate in the right space.

In response to Chairman Cannady, Ms. Merten said the HRC is made up of 6 appointments from Buncombe County and 6 appointments from City Council. She said there is no current Biltmore Village property owner on the Commission, but most have backgrounds in historic preservation, or landscape architecture or planning.

In response to Ms. Shriner, Mr. Glines said that the size of the mobile food trucks are limited to two axels.

At 8:52 p.m., Chairman Cannady closed the public hearing.

Ms. Carter felt that if there are going to be mobile food trucks in Biltmore Village, they need to fit in because Biltmore Village is different from anywhere else.

Ms. Daniel said what is before the Commission is a proposal to regulate them and establish a limit of two. There is not a proposal to ban them. The Commission's choice is to regulate them or to have staff come back with a proposal to ban them.

Ms. Mathews again said that there is a buy in that you have with a historic district that everyone else has bought in and invested in. Even though the use is not bad, the fact is that we don't have a way to set some aesthetic criteria to guarantee that there is a comfort level for all the other people who have invested in that neighborhood. Unlike downtown, it is a greater uniformity of aesthetics than downtown.

Mr. Minicozzi recalled the Downtown Commission wrestled with all of these things when mobile food trucks were first brought up. He wondered if there was a way to allow this to move forward but put some caveat to ask the local entity to solve the aesthetic problem. Ms. Daniel said the Commission could move this forward with one or two trucks but then request that the HRC work on some aesthetic guidelines as advise to the Planning & Zoning Commission for further modifying. If you want any limitation on it, the draft in front of you does that. Ms. Ashley further noted that aesthetic criteria could be added to the zoning requirement, but not to the Biltmore Village District historic guidelines.

Ms. Mathews suggested the mobile food truck in Biltmore Village be limited to one, since one is operating there now.

Mr. Smith could support two mobile food vending trucks in Biltmore Village. He felt the biggest problem they will encounter is finding a place where they can be located.

Ms. Mathews then suggested the single truck just continue operating using a temporary use permit until some aesthetic guidance is brought forward. Ms. Merten said that if the HRC received a specific request from the Planning & Zoning Commission to draft some aesthetic guidelines, a subcommittee could be formed to do that task.

When Mr. Minicozzi asked if the Commission should formally request the HRC to draft some aesthetic guidelines, Mr. Glines said that he will share that request with City Council and let Council direct the HRC if they choose.

Based on the above findings and the analysis provided in the report, Mr. Smith moved to recommend approval of an amendment to Chapter 7 of the Code of Ordinances to provide minor amendments to general regulations related to mobile food vending with new restrictions for operating in Biltmore Village and an amendment to Article 5, Chapter 16 of the Asheville Code of Ordinances to extend the hours of operation for pushcarts. This motion was seconded by Ms. Shriner and carried on a 5-1 vote, with Ms. Mathews voting "no."

#### **Other Business**

At staff's request, Chairman Cannady announced a mid-month meeting on December 20, 2012, at 4:00 p.m. in the First Floor North Conference Room in the City Hall Building. After the mid-month meeting on December 20, the Commission's next meeting will be on January 2, 2013, at 5:00 p.m. in the First Floor Conference Room in the City Hall Building.

Since this is the second time in a couple of months of incongruent zoning and how zoning affects the context of the entire area, Mr. Minicozzi offered his services at looking at where this could be a repeat issue. He offered to form a subcommittee to go through the zoning plan to see if there are any of these issues where the zonings don't match and make a short presentation to the Commission at their next meeting. Ms. Daniel said that she would be happy to receive that information as Planning staff has also done some of that preliminary research.

#### **Adjournment**

At 9:12 p.m., Mr. Minicozzi moved to adjourn the meeting. This motion was seconded by Mr. Smith and carried unanimously on the 6-0 vote.